

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

FELIX BRIZUELA,

Plaintiff,

v.

CIVIL NO. 1:22-CV-74
(KLEEH)

MARK R. ZOGBY,

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION [ECF NO. 7] IN PART AND
DISMISSING ACTION WITH PREJUDICE

On August 24, 2022, the pro se Plaintiff, Felix Brizuela, filed a Complaint against Mark R. Zogby. Pursuant to 28 U.S.C. § 636 and the local rules, the Court referred the action to United States Magistrate Judge Michael J. Aloï (the "Magistrate Judge") for initial review. On September 16, 2022, the Magistrate Judge entered a Report and Recommendation ("R&R"), recommending that the Court dismiss the action without prejudice for failure to state a claim.

The R&R informed Plaintiff that he had fourteen (14) days from the date of service of the R&R to file "specific written objections identifying the portions of the Report and Recommendation to which objection is made, and the basis for such objection." It further warned him that the "[f]ailure to timely file written objections . . . shall constitute a waiver of de novo review by the District Court and a waiver of appellate review by

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the Circuit Court of Appeals.” Plaintiff accepted service of the R&R on September 22, 2022. To date, no objections have been filed.

When reviewing a magistrate judge’s R&R, the Court must review de novo only the portions to which an objection has been timely made. 28 U.S.C. § 636(b)(1)(C). Otherwise, “the Court may adopt, without explanation, any of the magistrate judge’s recommendations” to which there are no objections. Dellarcirprete v. Gutierrez, 479 F. Supp. 2d 600, 603-04 (N.D.W. Va. 2007) (citing Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983)). Courts will uphold portions of a recommendation to which no objection has been made unless they are clearly erroneous. See Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

Because Plaintiff filed no objections, the Court is under no obligation to conduct a de novo review. Accordingly, the R&R was reviewed for clear error. Upon careful review, and finding no clear error, the Court **ADOPTS** the R&R [ECF No. 7]. Rather than dismissing without prejudice as recommended, the Court finds that the action shall be **DISMISSED WITH PREJUDICE** and **STRICKEN** from the Court’s active docket. The motion to proceed in forma pauperis is **DENIED** [ECF No. 2].

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to counsel of record via email and the pro se Plaintiff via certified

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mail, return receipt requested.

DATED: June 13, 2023

Handwritten signature of Thomas S. Klee in black ink.

THOMAS S. KLEE, CHIEF JUDGE
NORTHERN DISTRICT OF WEST VIRGINIA